THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 27559 of 2007

Oral order:

Questioning the action of respondent No.3 in publishing the voters list of respondent No.4-Society, without including the names of petitioner Nos.1 to 9, and proceeding to conduct elections to the Managing Committee of respondent No.4-Society on 28.12.2007 based on the said voters list, the petitioners filed the present writ petition.

The petitioners state that they are members of respondent No.4-Society. The case of the petitioners is that on 29.03.2007, elections to the Managing Committee of respondent No.4-Society were conducted, and in the voters list prepared for the purpose of the said election, the names of petitioner Nos.1 to 9 are found, while the names of petitioner Nos. 10 to 23, who are also members of the society, are not found. However, respondent No.1, without approving the new Managing Committee of the said society, has issued proceedings dated 07.05.2007, appointing respondent No.3 as Person-in-Charge of the said society to manage the affairs of the society for a period of six months.

Aggrieved by the said order, the newly elected President of the Society has filed W.P. No. 14683 of 2007, which was disposed of by order of this Court dated 12.07.2007 directing respondent No.1 to receive the representation of the Society and pass appropriate orders thereon. Pursuant to the said orders, respondentNo.1 passed orders dated 19.11.2007, directing respondent No.2 to initiate necessary action for conducting elections to the Managing Committee of

respondent No.4-Society.

Now the grievance of the petitioners is that pursuant thereto respondent No.3, without including the names of the petitioners, who are active members, and without calling for any objections, if any, has prepared and published the voters list of 125 members excluding their names and including the names of dead person, and basing on such erroneous voters list, also issued election notification and is proceeding to conduct elections on 28.12.2007, and if respondent No.3 is allowed to conduct elections basing on such erroneous voters list, they will be put to irreparable loss and hardship. Hence, the petitioners seek a direction to the respondents to permit them to participate in the elections scheduled to be held on 28.12.2007 to the Managing Committee of respondent No.4-Society.

Heard the learned counsel for the petitioner and the learned Government Pleader for Co-operation for respondent Nos. 1 to 3.

The elections to the Managing Committee of respondent No.4-Society, in terms of Rule 22(1)(a) of the A.P. Co-operative Societies Rules, 1964 are scheduled to be held on 28.12.2007. It is the case of the petitioners that the respondents without considering the objections filed by the petitioners, published the final voters list, in which their names are not found, and on the basis of such erroneous voters list, the respondents are proceeding to conduct the elections. The petitioners state that if the respondents are allowed to conduct elections with such erroneous voters list, they will be put to irreparable loss and hardship.

The writ petition raises disputed questions of fact, namely whether the petitioners are members of respondent No.4-society, and if so, whether they are entitled to exercise their voting rights for electing the Managing Committee, and whether the respondents before

publishing the final voters list called for objections, and if so whether the petitioners submitted their objections, and whether such objections were considered by the respondents. Such disputed questions of fact, the law is well settled, cannot be gone into by this Court in a writ petition under Article 226 of the Constitution of India.

Since the dispute raised by the petitioners relates to conduct of elections to respondent No.4-Society based on the final voters list published, which the petitioners contend is erroneous and, in fact, was prepared without calling for objections and without considering their objections, having regard to the provisions of Section 61(3) of the A.P. Co-operative Societies Act, 1964, which states that every dispute relating to, or in connection with any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision shall be final, I am of the considered opinion that the said question cannot be gone into by this Court in this writ petition, and the remedy of the petitioner, is to approach the Tribunal.

In fact this Court in **M. Ramachandra Reddy and Others v. Government of A.P.**[1] considered similar question as is involved in this writ petition, and held that even if it was assumed that there were certain irregularities in enrolment of the members of the society and preparation of the voters list as alleged by respondents 4 to 7, as held by the apex Court in **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**[2], the same can at the most be a valid ground to raise an election dispute after the declaration of the result, and that sub-sections (3) and (4) of Section 61 of the Act in clear terms provide that any dispute relating to any election to a committee of a society shall be referred to the Tribunal only after the date of declaration of the result of

such election.

Since in the instant case, elections to the society are yet to be held, the petitioner, after declaration of the result of the elections, is at liberty to approach the Tribunal under Section 61(4) of the Co-operative Societies Act, 1964 raising the dispute relating to or in connection with election, referred to under sub-section (3) thereof.

For the foregoing reasons, I find no merit in the writ petition, and the same is accordingly dismissed. However, the petitioners are at liberty to approach the Co-operative Tribunal under
Sections 61(3) and (4) of the A.P. Co-operative Societies Act, after conduct of the elections and raise election dispute. No costs.

N.V. RAMANA, J.

Dated: 26th December, 2007.
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[1] 2006 (2) ALD 296
[2] (2001) 8 SCC 509